IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Yvonne Becker, Christopher Nobles, Rosa Ramirez, Valerie Seyler, and Jannien Weiner,	Case No. 0:20-cv-02016 (KMM/BRT)
Plaintiffs,	
v.	
Wells Fargo & Co.; Employee Benefit Review Committee; Wells Fargo Bank, National Association; and John and Jane Does 1-20,	**CLASS ACTION**
Defendants.	

DECLARATION OF RICHARD W. SIMMONS OF ANALYTICS CONSULTING LLC

I, Richard W. Simmons, have personal knowledge of the facts and opinions set forth herein, and I believe them to be true and correct to the best of my knowledge. If called to do so, I would testify consistent with the sworn testimony set forth in this Declaration. Under penalty of perjury, I state as follows:

SCOPE OF ENGAGEMENT

1.   I am the President of Analytics Consulting LLC ("Analytics").[1] My company is one of the leading providers of class and collective action notice and claims management programs in the nation. It is my understanding that Analytics' class action consulting

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[1] In October 2013, Analytics Consulting LLC acquired Analytics, Incorporated. I am the former President of Analytics, Incorporated (also d/b/a "BMC Group Class Action Services"). References to "Analytics" herein include the prior legal entity.

practice, including the design and implementation of legal notice campaigns, is the oldest in the country. Through my work, I have personally overseen court-ordered class and collective notice programs in more than 2,000 matters. I have personally overseen notice programs in more than fifty settlements involving 401(k) and 403(b) defined contribution plans.

2.   This Declaration summarizes: my experience and qualifications; the proposed Notice Program[2] (the "Notice Program"); and why the Notice Program will provide the best practicable notice in this matter.

QUALIFICATIONS AND EXPERIENCE

3.   Founded in 1970, Analytics has consulted for 52 years regarding the design and implementation of legal notice and claims management programs relating to class and collective action litigation. These engagements include notice and claims administration involving antitrust, civil rights, consumer fraud, data breach, ERISA, employment, insurance, product defect/liability, and securities litigation. An overview of Analytics' history, class action consulting services, and casework is attached as Exhibit 1.

4.   Analytics' clients include corporations, law firms (both plaintiff and defense), and the federal government. Analytics' long-term federal contracts include the following:

        a)   Since 1998, Analytics has been under contract (five consecutive five-year contracts) with the Federal Trade Commission ("FTC") to administer and provide expert advice regarding notice (including

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[2] All capitalized terms not defined herein have the same meaning as those defined in the Settlement Agreement (the "Settlement," "Settlement Agreement" or "SA").

published notice) and claims processing in their settlements/redress programs;

b)   In 2012, Analytics was awarded a 10-year contract by the Department of Justice ("DOJ") to administer and provide expert advice regarding (including published notice) notice and claims processing to support their asset forfeiture/remission program; and,

c)   Since 2013, Analytics has been appointed as a Distribution Agent (two consecutive five-year terms) by the Securities and Exchange Commission ("SEC") to administer and provide expert advice regarding notice (including published notice) and claims processing to support their investor settlements.

5.   I joined Analytics in 1990 and have 32 years of direct experience in designing and implementing class action settlements and notice campaigns. The notice programs I have managed range in size from fewer than 100 class members to more than 40 million known class members, including some of the largest and most complex notice and claims administration programs in history.

6.   I have testified in state and federal courts as to the design and implementation of notice programs, claims processes, and the impact attorney communications have had on claims rates. As has always been my practice, I personally performed or oversaw Analytics' consulting services in each of the cases indicated on my CV, which is attached as Exhibit 2.

7.   I have presented to panels of judges and lawyers on issues regarding class notice, claims processing, and disbursement. In 2011, I was a panelist at the Federal Judicial Center's ("FJC") workshop/meeting regarding class action notice and settlement administration. In 2014, I was interviewed by the Consumer Financial Protection Bureau ("CFPB") regarding notice and claims administration in class action litigation as part of

their study on arbitration and consumer class litigation waivers. In 2016, I worked with the FTC to conduct research regarding: a) the impact of alternate forms of notice on fund participation rates; and b) the impact of alternate formats of checks on check cashing rates. In 2016, I was an invited participant to the Duke Law Conference on Class Action Settlements regarding electronic notification of class members. In 2017, I was the primary author of the Duke Law Conference's Class Action Settlement's guide to best practices regarding the evaluation of class action notice campaigns (including notice by electronic means). In 2021, I assisted in the development of George Washington University Law School's Class Action Best Practices Checklist.

8.   I have co-authored and presented CLE programs and whitepapers regarding class notice and class action claims administration. In 2016, I co-authored a paper titled "Crafting Digital Class Notices That Actually Provide Notice" (Law360.com, New York (March 10, 2016). My speaking engagements regarding notice include: *Risks and Regulations: Best Practices that Protect Class Member Confidentiality*, HB Litigation Conference on Class Action Mastery in New York City (2018); *Recent Developments in Class Action Notice and Claims Administration*, Practising Law Institute in New York City (2017); *The Beginning and the End of Class Action Lawsuits*, Perrin Class Action Litigation Conference in Chicago (2017); *Class Action Administration: Data and Technology*, Harris Martin Target Data Breach Conference in San Diego (2014); *Developments in Legal Notice*, accredited CLE Program, presented at Shook Hardy & Bacon, LLP in Kansas City (2013), Halunen & Associates in Minneapolis (2013), Susman Godfrey in Dallas (2014); and *Class Actions 101: Best Practices and Potential Pitfalls in*

Providing Class Notice, CLE Program, presented to the Kansas Bar Association (March 2009).

9.   In addition to my class action consulting work, I taught a college course in antitrust economics, was a guest lecturer at the University of Minnesota Law School on issues of statistical and economic analysis, was a charter member of the American Academy of Economic and Financial Experts and am a former referee for the Journal of Legal Economics (reviewing and critiquing peer-reviewed articles on the application of economic and statistical analysis to legal issues).

10.   This Declaration describes the Notice Program that has been proposed to be implemented in this matter and why, in my opinion, it is the best practicable manner of providing notice to the Settlement Class members.

INFORMATION SECURITY CONSIDERATIONS

11.   In order to comply with various state and federal data privacy laws, Analytics goes to great lengths to protect the confidentiality of the sensitive data we maintain on behalf of our clients. We have developed, documented, and implemented extensive programs to provide security for the information and information systems that support our class action consulting operations.

12.   Exceeding the requirements of SOC2,[3] Analytics has either an "authority to operate" or "authority to use" from the Securities and Exchange Commission under the

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[3] SOC2 is an internal control report on the services provided by an organization relevant to security, availability, processing integrity, confidentiality, or privacy. *SOC 2® - SOC for Service Organizations: Trust Services Criteria*, AICPA,

Federal Information Security and Management Act ("FISMA") to maintain critical and sensitive data regarding class members and potential claimants. This independent review and approval covers all of the systems, processes, and procedures needed to ensure the confidentiality, integrity and availability of client/claimant data. A summary of Analytics' current policy regarding information security is attached as Exhibit 3.

13.   Analytics' privacy policies and assessments that will govern this engagement have been reviewed and approved by the Federal Trade Commission, including a review by its Chief Privacy Officer.

SUMMARY OF NOTICE PROGRAM

14.   The Notice Program is similar to (or more robust than) other notice programs that I have administered or am aware of in which courts found to constitute the best notice practicable under the circumstances and to meet the requirements of due process and Federal Rule of Civil Procedure 23. The Notice Program provides for direct notice via email, so long as the Settlement Class member has an email on file with the Plan's recordkeeper. If a Settlement Class member does not have an email address, or if we (Analytics) receive notification that the emailed Class Notice was undeliverable, then the Settlement Class member will receive the Class Notice via U.S. mail. (Settlement Class members' email and mailing addresses will be provided by the Plan's current or former recordkeeper).

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https://us.aicpa.org/interestareas/frc/assuranceadvisoryservices/aicpasoc2report.html (last visited April 1, 2022).

15.   Direct notice will be supplemented by a national press release and publication of a short-form notice in *USA Today* and distributed to news outlets via a PR Newswire press release. Additionally, the full-length notice will be mailed upon request, and will all be available for download at the settlement website.

16.   The Notice Program also includes a settlement website and toll-free telephone line where individuals can learn more about their rights and responsibilities in the litigation.

17.   This Notice Program, supported by the details outlined below, conforms to the best practices identified in the FJC's publication "*Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*" (2010) and provides the best practicable notice in this litigation.

NOTICE PROGRAM

18.   In this matter, the identities of Settlement Class members are known with certainty and the proposed address research and re-mailing protocols are consistent with those used in other class action settlements.

19.   The Settlement Agreement defines the "Class" as:

All Persons who were Participants of the Plan at any time from March 13, 2014 through the date on which the Settlement becomes Final. Excluded from the Settlement Class are members of the Employee Benefit Review Committee from March 13, 2014 through the date on which the Settlement becomes Final. (SA 1.38).

Development of List of Settlement Class members

20.   The Settlement Agreement requires that Defendants instruct the Plan's current and former recordkeepers to provide Analytics with all information necessary to

disseminate the Class Notice to Settlement Class members and implement the Plan of Allocation as soon as reasonably possible after the entry of the Preliminary Approval Order.

21.   Based upon my experience with similar settlements, I expect this information to be fulsome and accurate (given the years involved (2014–2022)), and I expect to be able to reach the vast majority of Settlement Class members directly by e-mail or mail.

Direct E-Mailed Class Notice

22.   No later than 30 calendar days after the entry of the Preliminary Approval Order, Analytics will email the Class Notice to Settlement Class members who have an email address in the records provided by Defendant.

23.   Prior to disseminating notice via e-mail, Analytics will perform an analysis of the class data records that contain an e-mail address. The e-mail addresses will be subjected to an e-mail cleansing and will be deduplicated. The e-mail cleansing process removes extra spaces, fixes common typographical errors in domain name, and corrects insufficient domain suffixes (e.g., gmal.com to gmail.com, gmail.co to gmail.com, yaho.com to yahoo.com, etc.).

24.   The standardized e-mail addresses will then be subject to an e-mail validation process whereby each e-mail address is compared to known invalid e-mail addresses. As an additional step in the validation process, the e-mail address will be verified by contacting the Internet Service Provider ("ISP") to determine if the e-mail address exists.

25.   Additionally, Analytics designs e-mail notices to avoid many common "red flags" that might otherwise cause a Settlement Class member's spam filter to block or

identify the e-mail notice as spam. For instance, Analytics does not include the Rollover

Form (for Former Participants) or Class Notice as an attachment to the e-mail notice,

because attachments are often interpreted by various ISPs as spam. Rather, in accordance

with industry best practices, Analytics will include all text and content of the Class Notice

in the body of the email plus a link to the Settlement website where Settlement Class

members may download all operative documents including the Class Notice.

Direct Mailed Class Notice

26.   In instances where a valid e-mail address is not available for a Settlement

Class member as discussed above, Analytics will cause the Class Notice to be sent by first-

class mail, postage prepaid, to the best available address of each Settlement Class member

no later than 30 calendar days after the entry of the Preliminary Approval Order.

27.   In addition, mailing addresses will be updated using the National Change of

Address ("NCOA") database maintained by the United States Postal Service ("USPS");[4]

certified via the Coding Accuracy Support System ("CASS");[5] and verified through

Delivery Point Validation ("DPV").[6] This ensures that all appropriate steps have been

taken to send Settlement Notices to current and valid mailing addresses. This address

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[4] The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms and lists submitted to it are automatically updated with any reported move based on a comparison with the person's name and last known address.

[5] The CASS is a certification system used by the USPS to ensure the quality of ZIP +4 coding systems.

[6] Records that are ZIP +4 coded are then sent through Delivery Point Validation ("DPV") to verify the address and identify Commercial Mail Receiving Agencies. DPV verifies the accuracy of addresses and reports exactly what is wrong with incorrect addresses.

updating process is standard for the industry and is required by the USPS for mailings of this size.

28.   Analytics will request that the USPS return (or otherwise notify Analytics of) Class Notices with undeliverable mailing addresses. Addresses for these Settlement Class members will be researched using third-party data to identify potential updated mailing addresses, and a Class Notice will be re-mailed to the Settlement Class member if an updated address becomes available. Additionally, a printed version of the Class Notice will be mailed to all persons/entities who request one.

29.   At the completion of the notice campaign, Analytics will report to the Court the total number of e-mailed, mailed and delivered notices. In short, the Court will possess a detailed, verified account of the success rate of the notice campaign.

PUBLISHED NOTICE AND EARNED MEDIA

30.   The direct notice in this matter will be supplemented by both published notice and earned media. Following the distribution of the Class Notice, the short-form notice will be published once in the national edition of *USA Today*. The short-form notice includes a summary of information regarding the Settlement and will include the toll-free number and website address so that Settlement Class members may easily obtain more information, if they desire.

31.   Additionally, a party-neutral, Court-approved informational press release containing the information in the short-form notice will be issued over PR Newswire's US1 distribution list (or its equivalent) to more than 5,400 traditional media outlets (TV, radio, newspaper, and magazine) and 4,000 national websites. A list of the media outlets proposed

to receive the press release is attached as Exhibit 4. PR Newswire is a world-recognized newswire with a network that is capable of immediate distribution of news releases to the media, financial community and consumers. The release will include the toll-free number and website address so that Settlement Class members may easily obtain more information, if they desire.

RESPONSE MECHANISMS

Toll-Free Phone Support

32.   Prior to the mailing and emailing of the Class Notice, we will coordinate with Class Counsel to implement a dedicated toll-free number as a resource for Settlement Class members seeking information about the Settlement.

33.   By calling this number, Settlement Class members will be able to listen to pre-recorded answers to Frequently Asked Questions ("FAQs") or request to have a Notice mailed to them. Automated messages will be available to Settlement Class members 24-hours a day, 7-days a week, with call center agents also available during standard business hours. Analytics' IVR system allows Settlement Class members to request a return call if they call outside of business hours or if they prefer not to remain on hold. This automated process confirms the caller's phone number and automatically queues a return call the next business day.

34.   Calls are transferred to agents specifically assigned to an engagement using "skillset" routing. In addition to engagement specific training, call center agents receive training regarding Analytics' applications, policies, and procedures (such as privacy and identity proofing). This training also includes customer service-oriented modules to ensure

that the answers to callers' questions are delivered in a professional, conversational, and plain-English manner.

35.   Answers to frequently asked questions will be standardized and managed in Analytics' centralized knowledge management system. Each time a call is delivered to an agent, the agent is provided, on-screen, with a list of questions and Counsel-approved responses. Call center agents are monitored, graded, and coached on an ongoing basis to ensure that consistent messages are delivered regarding each matter.

Settlement Website

36.   Prior to the mailing and emailing of the Class Notice, Analytics will coordinate with Class Counsel to develop an informational website to provide information to Settlement Class members regarding the litigation and Settlement. Guided by an intent to keep Settlement Class members fully informed, the Website will conform to key e-commerce best practices:

a)   The top section of the home page, most prominent on lower resolution monitors, will include a summary message about the litigation along with a prominent button labeled "File Your Rollover Form" that takes Settlement Class members to a dedicated page explaining their options for submitting a Rollover Form (including online and paper). This button will be outside the color scheme of the page (black, gray, and white), making it especially prominent; and

b)   The home page content will be simplified and streamlined, so that specific prominent language and graphic images can direct Settlement Class members to specific content areas:

i)   FAQs: "Learn How This Litigation Affects Your Rights and Get Answers to Your Questions About the Litigation";

ii)   Important Deadlines: "Important Deadlines That Will Affect Your Rights"; and

iii)   Case Documents: "Detailed Information About the Case" including the operative Complaint, Settlement Agreement, Notice and Former Participant Rollover Form.

37.   Recognizing the increasingly mobile nature of advertising and communications, the settlement website will be mobile optimized, meaning it can be clearly read and used by Settlement Class members visiting the website via smart phone or tablet.[7] By visiting the website, Settlement Class members will be able to read and download key information about the litigation, including, but not limited to:

a)   Settlement Class members' rights and options;

b)   important dates and deadlines;

c)   answers to FAQs; and

d)   case documents.

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[7] It is common for more than half of class members who visit a settlement website to be using a smart phone or tablet.

38.   In order to ensure accessibility to information regarding the Settlement to all

Settlement Class members, the design and implementation of the website for this settlement

will be compliant with ADA Section 508 of the Rehabilitation Act (29 U.S.C. § 794d), as

amended by the Workforce Investment Act of 1998 (P.L. 105-220).

Email Support

39.   The website will contain prominent links for Settlement Class members to

ask questions about the litigation and Settlement. These links and the supporting email

address will be operational prior to the commencement of the Notice Program.

40.   Every email received by Analytics will be assigned a tracking number, and

the sender will receive an immediate response confirming receipt along with a link to

additional information regarding the litigation. When Settlement Class members' questions

have been answered, they will be sent a follow up email asking if they have any additional

questions and verifying that their questions were answered.

PERFORMANCE OF THE NOTICE PROGRAM ("REACH")

41.   Because of: 1) the nature of the Class; 2) the fact that virtually all Settlement

Class members are known; and 3) substantial research efforts will be undertaken, we expect

to successfully deliver the Class Notice to the vast majority of Settlement Class members.

Many courts have accepted and understood that a 70% or 80% reach is sufficient. In 2010,

the FJC issued a "Judges' Class Action Notice and Claims Process Checklist and Plain

Language Guide" (the "FJC Guide"). The FJC Guide states that, "[t]he lynchpin in an

objective determination of the adequacy of a proposed notice effort is whether all the notice

efforts together will reach a high percentage of the class. It is reasonable to reach between

70–95%."[8] In this matter, we expect to deliver notice well within this range.

PLAIN LANGUAGE NOTICE DESIGN

42.   The notices themselves are designed to be "noticed," reviewed, understood

and acted upon by Settlement Class members. The design of the notices follows the

principles embodied in the FJC's illustrative "model" notices posted at www.fjc.gov,

including presenting information in plain language. Many courts, and as previously cited,

the FJC itself, have approved notices that we have written and designed in a similar fashion.

The Class Notice attached as Exhibit A to the Proposed Order Preliminarily Approving

Class Action Settlement contains substantial, albeit easy-to-read, summaries of key

information about the rights and options of all Settlement Class members. Consistent with

normal practice, prior to being delivered and published, all notice documents will undergo

a final edit for accuracy.

CONCLUSION

43.   In class action notice planning, execution, and analysis, we are guided by due

process considerations under the United States Constitution, state and local rules and

statutes, and further by case law pertaining to notice. In practice, this legal framework

requires that: (1) the notice reaches the class; (2) the notice is informative and easy to

understand; and (3) Settlement Class members' rights and options are easy to act upon. In

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[8] *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* at 3, FED. JUD. CTR. (2010), https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf.

my opinion, all of these practical goals will be met with the proposed Notice Program because:

- a) direct notice will be provided to the vast majority of all Settlement Class members in this litigation;

- b) the Class Notice and short-form notice and are written in an organized fashion and using plain language; and,

- c) response mechanisms are designed to respond to Settlement Class members' requests and inquiries.

44. The proposed Notice Program will inform Settlement Class members of the existence of the litigation and Settlement through email and USPS. These notice efforts will be supplemented by publication notices in USA Today and the distribution of the short-form notice to thousands of news outlets via a PR Newswire press release. In addition, the Notice Program will include a comprehensive website with all relevant settlement documents, e-mail support, and toll-free phone support to Settlement Class members. Given the availability of data regarding the identity of Settlement Class members, and the proposed efforts to identify updated email and mailing addresses for them, this Notice Program provides comprehensive notice that will reach the vast majority of Settlement Class members.

45. This Notice Program is consistent with, or exceeds:

- a) historic best practices for class notification;

- b) FJC guidance regarding class notification;

- c) practices routinely approved by courts;

d)   practices implemented in other similar settlements involving 401(k)/403(b) plans; and,

e)   standards established by federal agencies with notification and distribution funds, such as the FTC, DOJ, and SEC.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

Dated: April 1, 2022

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Richard W. Simmons
President
Analytics Consulting LLC